

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

P. J. Sullivan
Proc I

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FILE: B-192120

DATE: September 28, 1978

MATTER OF: Pioneer Recovery Systems, Inc.

DIGEST:

Burden is on protester to substantiate its case. In carrying out protest decision function GAO will not conduct investigation to establish the truth of protester's speculative allegation that low bidder on labor surplus area set-aside cannot perform substantial portion of production, manufacturing or other services in labor surplus area. In present case record supports agency's conclusion that low bidder is eligible for labor surplus area set-aside, and, in absence of evidence to the contrary, we accept agency's conclusion as correct.

Pioneer Recovery Systems, Inc. (Pioneer), protests against the proposed award of the labor surplus area set-aside portion of invitation for bids (IFB) No. DLA100-78-B-0664, issued by the Defense Personnel Support Center, Philadelphia, Pennsylvania, to any other bidder. The subject IFB, issued on May 9, 1978, was for the procurement of parachutists' equipment and was a 50-percent labor surplus area set-aside. Pioneer protests that the low bidder on the unrestricted portion of the solicitation, Kings Point Manufacturing Co. (Kings Point), is not eligible for award of the set-aside portion since it is not located in a labor surplus area. Kings Point was awarded a contract on the unrestricted portion on July 14, 1978.

Regarding eligibility for the the labor surplus area set-aside, the solicitation indicated in clause CF7, "Revised Labor Surplus Area Eligibility," in pertinent part, that:

"(b) Procedures

(1) Determining Eligibility.

An offering firm shall be deemed eligible for labor surplus area set-aside award if it agrees to perform a substantial proportion of production, manufacturing, or appropriate services in labor surplus areas appearing on the Department of Labor's current listing of Labor Surplus Areas.

(2) Substantial performance in Labor Surplus Area requires that the aggregate costs to be incurred by the contractor, and/or its first tier subcontractors on account of manufacturing, production or appropriate services in a Labor Surplus Area amount to more than one-half of the contract price."


Specifically, the protester contends that Kings Point cannot perform a substantial proportion of production, manufacturing or other appropriate services in a labor surplus area and that the aggregate costs to be incurred by Kings Point and/or its first-tier subcontractors on account of manufacturing, production or other appropriate services performed in a labor surplus area will not amount to more than one-half of the contract price.

In its report on the protest, the Defense Logistics Agency indicated that Kings Point had inserted the words "Privileged Information" in its bid in clause B08, "Eligibility For Preference As A Labor Surplus Concern," and attached a letter setting forth the required information. Kings Point indicated in the letter that it intended to incur more than 50 percent of the manufacturing and production costs relative to each item in labor surplus areas. After Pioneer protested, at the request of the contracting agency, Kings Point provided a detailed cost breakdown of its bid price relative to those costs to be incurred in labor surplus areas. The data furnished corroborated the information submitted by Kings Point with its bid and confirmed that Kings Point's offer on the set-aside portion of

subject solicitation is in conformity with the requirements of clause CF7. Furthermore, the preaward survey performed on Kings Point contained letters of commitment from proposed suppliers located in labor surplus areas.

We have examined the report and supporting documentation submitted by the Defense Logistics Agency in response to Pioneer's protest and cannot disagree with the Defense Logistics Agency's conclusion that Kings Point is eligible for award of the labor surplus area set-aside. The burden is on the protester to substantiate its case. In carrying out our bid protest function, we will not conduct an investigation to establish the truth of the protester's speculative allegations that Kings Point cannot perform in a manner which makes it eligible for the labor surplus area set-aside. See Fire & Technical Equipment Corp., B-191766, June 6, 1978, 78-1 CPD 415. In the absence of evidence to the contrary, which Pioneer has not submitted, we will accept the contracting agency's conclusion as correct. See, for example, B-174041, December 22, 1971.

The protest is denied.


Acting Comptroller General
of the United States